

ESTTA Tracking number: **ESTTA384306**Filing date: **12/17/2010**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**Petition for Cancellation**

Notice is hereby given that the following party requests to cancel indicated registration.

Petitioner Information

Name	W.A. Industries, Inc.		
Entity	Corporation	Citizenship	IL
Address	236 Stanton Ct W Buffalo Grove, IL 60089 UNITED STATES		

Correspondence information	Matt Aven President W.A. Industries, Inc. 236 Stanton Ct W Buffalo Grove, IL 60089 UNITED STATES maven@megagro.com Phone:312-879-0864
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Registration Subject to Cancellation

Registration No	3126856	Registration date	08/08/2006
Registrant	LT Biosyn, Inc. 3406 Pomona Blvd. Pomona, CA 91768 UNITED STATES		

Goods/Services Subject to Cancellation

Class 001. First Use: 2002/01/21 First Use In Commerce: 2002/01/21
All goods and services in the class are cancelled, namely: Plant growth regulators for agricultural use


Grounds for Cancellation

Priority and likelihood of confusion	Trademark Act section 2(d)
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Marks Cited by Petitioner as Basis for Cancellation

U.S. Application/ Registration No.	NONE	Application Date	NONE
Registration Date	NONE		
Word Mark	MEGAGRO		
Goods/Services	plant growth hormone/stimulator for domestic use on domestic plants		

U.S. Application No.	76312485	Application Date	09/17/2001
Registration Date	NONE	Foreign Priority	NONE

		Date	
Word Mark	MEGAGRO		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 001. First use: First Use: 2001/07/01 First Use In Commerce: 2001/07/01 plant growth hormone/stimulator for domestic use on domestic plants		
Attachments	76312485#TMSN.gif (1 page)(bytes) Statement of the Grounds to Cancel the trademark.pdf (2 pages)(369445 bytes)		

Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/Matt Aven/
Name	Matt Aven
Date	12/17/2010

Statement of the Grounds to Cancel the trademark: MegaGro, Registration Number: 3126856

We believe that the trademark was wrongfully awarded to the current holder, LT Biosyn. As such, it should be canceled, and made available for W.A. Industries to reclaim.

Factual information from TESS:

1. W.A. Industries applied for trademark, MegaGro, on 9/17/01
 - a. FINAL refusal submitted to W.A. Industries on 4/19/02
 - b. Abandoned 10/22/02
 - c. Description: IC 001. US 001 005 006 010 026 046. G & S: plant growth hormone/stimulator for domestic use on domestic plants. FIRST USE: 20010701. FIRST USE IN COMMERCE: 20010701
2. LT Biosyn applied for trademark on 10/5/01
 - a. Abandoned 6/4/02
 - b. Description: IC 001. US 001 005 006 010 026 046. G & S: PLANT GROWTH REGULATORS FOR AGRICULTURAL USE
3. LT Biosyn applied for trademark on 9/6/05
 - a. Published for opposition on 5/16/06
 - b. Registered on 8/8/06
 - c. Description: IC 001. US 001 005 006 010 026 046. G & S: Plant growth regulators for agricultural use. FIRST USE: 20020121. FIRST USE IN COMMERCE: 20020121

Our Case:

Our denied application was on file on 9/6/05, when LT Biosyn sought and received trademark for MegaGro. Therefore, LT Biosyn should have known that from the W.A. Industries' application that "MegaGro" was in use since 7/1/2001 as a "plant growth hormone/stimulator for domestic use on domestic plants", as so stated on our application.

Both applications fall in the same class, and have almost exactly the same description.

Additionally, W.A. Industries owned the domain name www.mymegagro.com since 5/16/2001(REFERENCE: <http://web.archive.org/web/20011116110650/http://www.mymegagro.com/>).

Furthermore, W.A. Industries has owned the domain name, MegaGro.com, since at least 5/23/2002 (REFERENCE: <http://web.archive.org/web/20020523115107/http://megagro.com/>).

Therefore LT Biosyn should have been well aware that they were marketing a product name that was already in use.

More so, our trademark was denied because: Likelihood of confusion with "MAGNAGROW", trademark 2109859, which is still active.

Given that their declaration on their application states “The undersigned, being hereby warned that willful false statements and the like so made are punishable by fine or imprisonment, or both, under 18 U.S.C. Section 1001, and that such willful false statements, and the like, **may jeopardize the validity of the application or any resulting registration**, declares that he/she is properly authorized to execute this application on behalf of the applicant; he/she believes the applicant to be the owner of the trademark/service mark sought to be registered, or, if the application is being filed under 15 U.S.C. Section 1051(b), he/she believes applicant to be entitled to use such mark in commerce; **to the best of his/her knowledge and belief no other person, firm, corporation, or association has the right to use the mark in commerce, either in the identical form thereof or in such near resemblance thereto as to be likely, when used on or in connection with the goods/services of such other person, to cause confusion, or to cause mistake, or to deceive; and that all statements made of his/her own knowledge are true; and that all statements made on information and belief are believed to be true.”**

There is no conceivable way that LT Biosyn, in doing their due diligence to file for this application, was not aware of W.A. Industries’ product “MegaGro”. With the exact same name, and a very similar purpose, including the same international category, and a previous application for registration, they should not have been awarded this trademark. It appears that they willfully made false statements as to their belief that no other person had the right use the mark in commerce. As such, we are requesting that the trademark of MegaGro be reassigned to W.A. Industries.